

**Colorado River Basin Regional Water Quality Control Board**

**TO:** Mr. Tom Howard, P.E., Executive Director  
State Water Resources Control Board

**FROM:** Jose L. Angel, P.E. *Jose L. Angel*  
Assistant Executive Officer  
Colorado River Basin Regional Water Quality Control Board

**DATE:** October 2, 2014

**SUBJECT: REQUEST TO STATE BOARD TO PROSECUTE NATIONAL BEEF COMPANY, INC. FOR PASS-THROUGH AND INTERFERENCE VIOLATIONS AT CITY OF BRAWLEY WASTEWATER TREATMENT PLANT**

Dear Mr. Howard,

On April 13, 2014, I issued Administrative Civil Liability Complaint R7-2014-0041 against National Beef California, LP (NBC), alleging violations of Federal Pretreatment Standards on Pass-Through and Interference. The Complaint proposes that \$3.75-million dollars in liability be imposed. The matter has garnered substantial media attention, is highly contested on both procedural and substantive due process grounds, among others, and is one of the largest proposed liabilities for an Administrative Civil Liability action ever before the Colorado River Basin Region Water Quality Control Board (Regional Water Board). The Prosecution Team hereby requests that the State Water Resources Control Board (State Board) take this matter up on its own motion pursuant to Water Code sections 183, 13320 and all applicable law. NBC contends "the individuals acting on behalf of the Regional Board have so intertwined the functions of investigation, prosecution and advising the Board that the proceeding against National Beef violates National Beef's constitutional right to Due Process."<sup>1</sup> While the Prosecution Team disagrees, it believes the allegations involving serious and repeated water quality violations deserve to be heard on the merits. As positioned by NBC, the proceeding has been and will continue to be dominated by due process claims that are detracting from the possibility of a hearing focused on the merits of the case.

Copies of the Prosecution Team evidence in support of the Complaint and NBC's evidence in response to the Complaint can be downloaded from:

[http://www.waterboards.ca.gov/coloradoriver/water\\_issues/programs/enforcement/national\\_beef/](http://www.waterboards.ca.gov/coloradoriver/water_issues/programs/enforcement/national_beef/)  
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<sup>1</sup> NBC 9/19/2014 Motion to Dismiss Administrative Civil Liability Complaint (Motion to Dismiss) at 2:9-12.

On September 19, 2014, NBC submitted the attached Motion to Dismiss and related evidence contending; (1) there have been chronic, unlawful ex parte communications demonstrating actual bias by the Advisory Team; (2) there is documented bias in favor of the Prosecution Team; (3) attorney Vandenberg has served improperly in the dual role of prosecutor and advisor; and (4) advisory attorney Okun improperly defended the deposition of technical advisory team member Rokke and is no longer an unbiased advisor. Motion to Dismiss, *passim*. NBC contends it cannot receive a fair hearing from the Regional Water Board and that the Complaint must be dismissed. While the Prosecution Team believes NBC's contentions are ultimately without merit and is confident that NBC could receive a fair and impartial hearing before the Regional Water Board, continuing to debate the procedural due process issues raised by NBC would create a distraction from the merits of the underlying case that would make adjudication of the matter by Regional Water Board impracticable at best. The Prosecution Team has already spent hundreds of hours of staff time to assess and defend against the due process claims, and expects to spend hundreds more prior to and at the hearing. We cannot estimate the number of hours the Advisory Team has spent on these issues, but know it must be substantial.

Given the circumstances I have withdrawn the Complaint. I firmly believe, however, that the alleged violations are significant and continue to warrant enforcement. In light of the due process arguments made by NBC, my recommendation is that the matter be heard before the State Water Board in order to prevent even the appearance of bias and to ensure that the case moves forward on the merits without unnecessary distraction and the nearly unprecedented amount of staff and attorney time being expended on the alleged due process issues. Therefore, I respectfully request that the State Water Board agree to hold a hearing on the issue of NBC's water quality violations on its own motion. By courtesy copy of this letter to NBC and the Advisory Team, I invite their comments on this request

Thank you for your consideration of my request. I can be reached at (760) 776-8932 should you or your designee(s) need additional information.

Attachment: NBC Motion to Dismiss

cc: Regional Water Board Members  
Ms. Lori Okun, OCC, SWRCB  
Mr. Robert E. Perdue, Regional Water Board  
Ms. AnnaKathryn Benedict, Office of Enforcement, SWRCB  
Mr. Tom Vandenberg, OCC, SWRCB  
Mr. Perry Glantz, Stinson Leonard Street, LLP, Greenwood Village, Colorado  
Mr. Andre Monette, Stinson Leonard Street, LLP, San Diego  
Ms. Parthenia B. Evans, tinson Leonard Street, LLP, Kansas City, Missouri  
Mr. Gideon Kracov, Los Angeles